

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE STATE BOARD OF MEDICAL EXAMINERS FOR LICENSURE OF
PROFESSIONAL COUNSELORS, MARRIAGE AND FAMILY THERAPISTS AND
PSYCHO-EDUCATIONAL SPECIALISTS**

IN THE MATTER OF:

ANONYMOUS

OIE # 2009-15

CONSENT AGREEMENT

Respondent.

By agreement of the State Board of Medical Examiners for the Licensure of Professional Counselors, Marriage and Family Therapists, and Psycho-Educational Specialists of South Carolina [hereinafter "the Board"] and the above-named Respondent, the following disposition of this matter is entered pursuant to the provisions of S.C. Code Ann § 1-23-320(f) (1976, as amended), in lieu of a hearing before the Board. Respondent, admitting the allegations herein and agreeing to the sanctions as set forth below, agrees to waive authorization, filing, and service of a Formal Complaint and formal hearing procedures.

PROCEDURAL HISTORY/FACTS

1. Respondent is licensed to practice as a Licensed Professional Counselor in the State of South Carolina and was so licensed at all times relevant to the matters asserted in this case, and is subject to the jurisdiction of the Board.
2. On or about April 2009, Respondent began individual treatment sessions with "A.S." and "J.S.," hereinafter "Children." During the time pertinent to this matter, the parents of Children, "M.S." and "R.S.," hereinafter respectively "Father" and "Mother," were undergoing divorce proceedings. Mother maintained sole custody of Children and Father had full visitation rights. Respondent recommended, during the first counseling session and every session thereafter, that both Father, Mother and Children participate in the counseling sessions.
3. On or about June 15, 2009, Father learned of Children's treatment sessions and sought a copy of Children's from Respondent. Respondent offered to let Father view the records in his office with him present, but refused to provide a copy of the records to Father at that time, due to confidentiality concerns and concerns that information disclosed by Children during the counseling sessions would result in damage to their relationship with their Father.

4. Father then contacted his attorney to help him obtain the records from Respondent. On August 6, 2009, Father's counsel sent a letter to Respondent. The letter acknowledged receiving a message from Respondent saying he would not release records without a court order and stated that an order in this matter already existed. The letter provided: "a Pendente Lite Order . . . states . . . "The Father shall have the right to have access to all records regarding the children, such as school report cards, medical records, dental records . . ." In his communication to Respondent, Father's counsel also included a letter from Mother's counsel that provided "an order is unnecessary as both parents have a right to obtain the record of the medical counselors involving their children as a matter of right under state law. We have no opposition to that, and I am copying [Respondent] with this letter to indicate we do not object to his production of any of his records." Respondent did not respond to this communication.
5. On August 10, 2009, Father unannounced, appeared at Respondent's office again asking for the records. Respondent was in a counseling session with another patient who was unrelated to Father. Respondent discovered Father's presence at his office upon stepping out of the session with the other patient for a moment. Father's unannounced presence caused an interruption to the counseling session with the other patient. Father presented copies of the letter from the attorneys, as well as the Pendente Lite Order.
6. Respondent refused to release copies of the treatment records. After a heated exchange, Respondent stated he would give Respondent a summary of the records. Respondent later gave a one paragraph summary to Father. Father filed a complaint with the Board against Respondent, alleging Respondent did not release the records of minor children to their Father.
7. According to Respondent, Respondent offered an individual counseling session with Father to review the summary of the records and any questions that Father may have had, but Father declined.

CONCLUSIONS OF LAW

1. The Board's position with respect to minor children receiving counseling is that "Each parent, whether custodial or noncustodial parent of the child, has equal access and the same right to obtain all educational records and medical records of their minor children... unless prohibited by order of the court." See S.C. Code Ann. § 63-5-30 (2010).
2. In the present case, no court order existed that prohibited Father from accessing counseling records. The language in the Pendente Lite Order in fact, mirrored the statutory language above and gave father equal access to the records.

3. In addition, Mother's attorney, by letter, provided that no objection to the records being released existed. Respondent did not respond to Mother, Father, or their attorneys after receiving this letter to inform them of the family court's order or the letter from Mother's attorney was insufficient to permit release of the records.
4. Respondent may have believed he was acting in Children's best interest by not disclosing the counseling records to Father, however, he did not assert a privilege on behalf of Children nor did he communicate that fact to Father or his attorney.
5. Respondent has violated:
 - a. Section 40-1-110(f) which provides a licensee may not commit a "dishonorable, unethical, or unprofessional act" that is likely to deceive, defraud, or harm the public;"
 - b. Section 40-75-110 (A)(3) which provides a licensee may not violate a "regulation, directive, or order" of the Board;
 - c. Section 40-75-119 (A)(8) which provides a licensee may not violate "the code of ethics adopted by the board in regulation" and;
 - d. Regulation 36-19(A)(13) which provides, "Professional Counselors shall be accountable at all times for their behavior and must be aware that all actions and behaviors reflect on professional integrity and, when inappropriate, can damage the public trust in the counseling profession."

THEREFORE, IT IS ORDERED WITH RESPONDENT'S CONSENT THAT:

1. Respondent is hereby issued a public reprimand.
2. Respondent shall pay, within sixty (60) days of the execution of this Consent Agreement by the Board Chairman, investigative costs in the amount of \$405.00.
3. Respondent shall be supervised by a board approved licensed professional counselor supervisor for two hours per month over the next 15 months, totaling thirty hours of supervision, with an emphasis on professional ethics. Respondent shall submit written proof to the Board of satisfactory completion of this requirement within fifteen days of completing this requirement.
4. Failure by Respondent to comply with any of the provisions of this Consent Agreement may result in the immediate temporary suspension of Respondent's license, pending hearing and until further Order of the Board.

5. It is further understood and agreed that this Consent Agreement is a public document under the South Carolina Freedom of Information Act.
6. This Consent Agreement shall take effect immediately upon Board approval.

AND IT IS SO ORDERED.

STATE BOARD OF EXAMINERS FOR
THE LICENSURE OF PROFESSIONAL
COUNSELORS, MARRIAGE AND FAMILY
THERAPISTS, AND PSYCHO-
EDUCATIONAL SPECIALISTS

Columbia, South Carolina
10-8, 2013

Danny L. Hewitt
President of the Board

WE CONSENT:

Alissa Fleming
M. DAWES COOKE, JR., ESQ.
ALISSA FLEMING, ESQ.
Attorney for Respondent

10/7/13
Date

Melina Mann
Melina Mann
General Counsel
S.C. Department of Labor, Licensing & Regulation
PO Box 11329
Columbia, SC 29211-1329

10/7/13
Date

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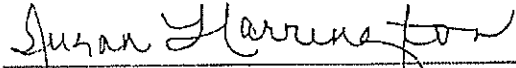
Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the within **Consent Agreement (Private)** upon the person hereafter named, by placing the same in an envelope, securely wrapped, in the United States Mail, certified mail, return receipt requested, properly addressed to the said persons hereafter named, at the places and addresses stated below, which are the last known addresses for the same:

Alissa D. Fleming, Atty
Barnwell Whaley Patterson & Helms LLC
288 Meeting St, Ste 200
P O Drawer H
Charleston, SC 29402

SOUTHCAROLINA DEPARTMENT OF LABOR,
LICENSING & REGULATION



Susan Harrington, Administrative Assistant
LLR – Board For The Licensure of
Professional Counselors, Marriage and Family
Therapists and Psycho-Educational Specialists
Post Office Box 11329
Columbia, SC 29211-1329

October 8, 2013.